BAIL SLIP

The Appellants/Accused Nos.1 to 3 viz. Mani @ Lakshmanan, Indirani and Saroja were directed to be released on bail as per the order of this Court dated 11.10.2004 and made in Crl.M.P.9626/2004.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 2.11.2006

Coram

THE HONOURABLE MR.JUSTICE R. BALASUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE S. TAMILVANAN

CRIMINAL APPEAL No.1110 OF 2004

1. Mani @ Lakshmanan
2. Indirani
3. Saroja ... Appellants(Accused No.1 to 8)

-Vs.-

State rep.by
The Inspector of Police
Pallipalayam Police Station
Namakkal District
(Crime No.438/2001). ...Respondent (Complainant)

Appeal against the judgment dated 18.12.2003 made in S.C.No.169 of 2002 on the file of Additional District Sessions Court (Fast Tack Court No.3), Namakkal.

For Appellants : Mr.T.Gowthaman

For Respondent : Mr. C.T.Selvam
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by R. Balasubramanian, J)

The appellants in this appeal are A.1 to A.3 in S.C.No.169 of 2002 on the file of Additional Court of Sessions (Fast Track Court No.3), Namakkal. They were tried in that sessions case for offences

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under Sections 120B, 506(ii) and 302 read with 34 I.P.C. At the end of the trial, the learned Trial Judge acquitted A.1 and A.2 under Section 506(ii) I.P.C. and convicted A.3 alone under that section. As far as the other charges are concerned, the learned Trial Judge found all the accused guilty under those charges. For the offence of criminal conspiracy, each of the accused are sentenced to undergo imprisonment for life together with a fine of Rs.2,000/- carrying a default sentence. Likewise for the capital offence, each one of them are sentenced to undergo imprisonment for life together with a fine of Rs.2,000/- carrying a default sentence. For the offence under Section 506(ii) I.P.C. A.3 stands sentenced to undergo one year rigorous imprisonment together with a fine of Rs.1,000/- carrying a default sentence - the sentences stand directed to run concurrently. Hence the present appeal. Heard Mr.T.Gowthaman, learned counsel appearing for the appellant and Mr.C.T.Selvam, learned Additional Public Prosecutor for the State.

2. Pursuant to a criminal conspiracy hatched at about 10.00 a.m. on 11.5.2001 between A.1 to A.3 in their house, which was over heard by P.W.3 as result of which he was criminally intimidated; A.1 to A.3 murdered Suriakala and thus punishable for the offences referred to earlier. The prosecution examined P.Ws.1 to 11 to sustain their case. Exs.P.1 to P.19 and M.O.1 came to be marked on the side of the prosecution. The defence examined three witnesses on their side as D.Ws.1 to 3. P.W.3 is stated to be the cousin of Suriakala, since deceased. Apart from giving details of some quarrel between A.1 to A.3 on the one hand and Suriakala on the other hand, which is used to be sorted out by P.W.2, who is none else than the Senior Paternal Aunt of P.W.3, he would state that on the occurrence day he and his mother went to A.1's house where he found the door closed but however the window was kept opened. All the three accused were found chatting inside their house. He over heard them saying that as Suriakala, since deceased is a thorn in their thigh, she must be killed and after killing, it must be made to appear that she committed suicide. A.3 noticed the presence of P.W.3 overhearing and therefore abused him by saying that if he chooses to disclose the conversation which he heard to anybody else, he and his mother would be killed. Out of fear P.W.3 and his mother went to Bhavani and at 6.00 or 6.30 p.m. on that day, news came that Suriakala died. Immediately P.W.3 proceeded to the crime scene where they found Suriakala lying dead bleeding through her nose, ears as well as eyes. He was examined by the police on the date of occurrence and again one month later. P.W.1 is the elder brother of Suriakala. He also deposed that there were quarrels in the family and he used to pacify them. At about 3.45 p.m. on 11.5.2001 when P.W.1 was in his shop, he received a telephone call from A.2 that Suriakala had bolted the door from inside and she is not opening the same and therefore P.W.1 must come immediately to solve the problem. However P.W.1 could not go immediately. At 5.30 p.m. Jinesh (examined as

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D.W.3 in this case) telephoned to P.W.1 once again stating that he peeped into the house by removing the tiles and he found his mother lying on the floor with her face down and Jinesh requested P.W.1 to come and see immediately. P.W.1 reached the house at 6.15 p.m. where he found the door broke open and the latch broken. On he entering the crime scene he found his sister bleeding through her ear and nose. He sent for a Doctor nearby, who had come and pronounced her dead. When P.W.1 went, A.1 was not there. P.W.1 informed his mother and others about the incident and all of them came at about 7 or 7.15 p.m. They suspected that Suriakala might have been assaulted and tortured. P.W.1 went to the police station and gave a complaint. Ex.P.1 is the said complaint and he identified the signature found in Ex.P.1 as his, which is marked as Ex.P.2. He was examined by the police.

3. P.W.10 is the Sub Inspector of Police in the investigating police station. At 11.45 p.m. on 11.5.2001 P.W.1 appeared before him and gave a written complaint, which he registered as Ex.P.1 in his police station crime No.438 of 2001 under Section 174 of the code of Criminal Procedure. Ex.P.16 is the printed First Information Report prepared by him. He sent the Express Records to the Court as well as to the higher officials. P.W.9 is the police constable, who carried the express records and handed over the same to the court. He also carried Ex.P.14, the altered express intimation and Ex.P.15 the altered express printed first information report to the court as well as to the higher officials. P.W.10 reached the scene of occurrence at 1.15 a.m. in the following morning and observed the scene. In the presence of P.W.5 and another he prepared Ex.P.3, the Observation Mahazar and Ex.P.17, the rough sketch. He examined P.W.1, A.2, A.1, D.W.3 and others by recording their statements. From 2.00 a.m. to 4.00 a.m. he conducted inquest over the dead body in the presence of panchayatdars and witnesses. Ex.P.18 is the inquest report. At 4.00 a.m. in the morning he sent the dead body through a police constable with a requisition to the Government Hospital for post-mortem. P.W.8 is the constable, who accompanied the dead body to the hospital with a requisition Ex.P.8 for post-mortem. After post-mortem he handed over the dead body to the relatives. P.W.7 on receipt of the dead body along with the requisition commenced post-mortem on the dead body at 9.45 a.m on 12.5.2001. During post-mortem he found various symptoms as noted by him in Ex.P.9, the post-mortem report. The symptoms noted therein are as hereunder:-

"External Injuries:-

The face is livid with bleeding from both nostrils. Eyes bulged out with sub conjuctival haemorrhage on both sides.

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1. Two ligature marks placed on the left side of the neck one below the other just below the lower jaw. They are seen as 2 cm broad shallow furrow, the base of the furrow is reddish brown, dry, hard, with linear ecchymosis at the edges. The upper one is 5 cm long and lower one is horizontally placed running outwards and backwards in a semicircular pattern, interrupted on the right side of the neck.

2.Circular burns with partially peeled off cuticle 5 cm x 5 mm over front of left upper chest.

Internal:-

Skull:- intact. Brain - congested wt.1000 gms. Thorax - bony eags intact. Lungs - congested wt. Right 450 gms. Left 350 gms, Heart: congested 150 gms. Abdomen - intestine distended with gas. Liver - congested, 1200 gms. Spleen - congested, 120 gms. Kidneys - congested, each 75 cms. Uterus - Normal. Stomach - Turbid brownish 200 ml fluid bladder - empty. The following viscera have been preserved for chemical analysis:-

1. Brain 2. Stomach and a portion of intestine and their contents. 3. Liver. 4. Kidney. 5. Blood. 6. Sample of preservative used and 7. Hyoid bone for HP exam."

According to him death would have occurred 16 - 24 hours prior to autopsy. P.W.7 endorsed his final opinion on the cause of death at the foot of Ex.P.12 - the report on the viscera. According to him death is due to violent asphyxia, due to strangulation. The report do not show that any poison was detected on the viscera. Ex.P.10 is the Questionnaire given to him by P.W.10. Ex.P.11 is the report on the hyoid bone. Ex.P.12 is the report on the viscera. The doctor in his evidence had deposed that a saree like M.O.1, if used to strangulate the neck, the person strangulated would die. Ex.P.13 is the requisition given by the Revenue Divisional Officer to subject the case properties for chemical examination.

4. P.W.10 continued the investigation. He submitted Ex.P.10 the questionnaire to P.W.7. On the final opinion of the Doctor, he altered the section of offence from one under section 174 Cr.P.C. to one under Section 302 I.P.C. Ex.P.14 is the altered Express

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intimation. P.W.11 is the investigating officer, who sent Ex.P.15 the altered Express First Information Report to the Court. He continued the investigation from that stage by examining witnesses and recording their statements. On 23.6.2001 when P.W.11 was in the police station, P.W.6 appeared before him along with A.1; A.1's statement Ex.P.4 and P.W.6's report Ex.P.5. At 11.00 a.m. on that day P.W.11 arrested the accused and examined him in the presence of P.W.6 and another. A.1 gave a voluntary confession statement at that time, the admissible portion of which is Ex.P.19. Pursuant to Ex.P.19, in the presence of the same witnesses, M.O.1 came to be recovered from A.1's house under Ex.P.7.

5. P.W.2 is the mother of the deceased. She would depose that her daughter was given in marriage to A.1 and at that time they were happy. However, six moths prior to the occurrence when her daughter was living with her husband as joint family, problems arose and the root cause is A.3. Suriakala was complaining to P.W.2 that A.3 is having a doubtful character. Therefore P.W.2 advised Suriakala that if she is not willing to go and live with her husband, she can stay back with her. However Suriakala left saying that P.W.2 must take care of her children as they are going to School. Suriakala also told P.W.2 that as many men visit their house to see A.3, she is felling highly ashamed to stay in the house. These are all the reasons for the quarrel in the house. Apprehending that Suriakala will make the happenings in the house of the accused public they have killed her. P.W.4 is the husband of A.3 and his relationship with his wife is strained. P.W.4 had already applied for divorce against A.3 and after giving a complaint in the All Women Police Station, A.3 is residing only at Palliapalayam. Out of his wedlock with A.3, there are four children and all of them are married. Though he was informed about the incident he did not go. P.W.5 witnessed the preparation of Ex.P.3, the Observation Mahazar. P.W.6 is the Village Administrative Officer, who deposed that at about 9.00 a.m. on 23.6.2001 A.1 appeared before him in his office and wanted to confess the crime stating that he had come to him fearing that police would arrest him if he goes to the Village Administrative Officer's Office at Pallipalayam. A.1 gave the confession statement first, which was reduced into writing by P.W.6. Ex.P.4 is the said statement. Ex.P.5 is P.W.6's report. At 11.00 a.m. on 23.6.2001 P.W.6 produced A.1 in the police station along with Ex.P.4 and P.5 and at that time A.1 was examined after arrest. A.1 gave a voluntary confession statement, the admissible portion of which is Ex.P.6. Pursuant to Ex.P.6, M.O.1 came to be recovered under Ex.P.7 attested by him. P.W.11 continued his investigation further by examining witnesses and recording their statements. At 12.30 p.m. on 23.6.2001 P.W.11 arrested A.2 and A.3 and sent them for judicial remand. After complying with all the legal formalities P.W.11 filed the final report in court against the accused on 25.7.2001 for the offences referred to earlier.

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6. When the accused were questioned under Section 313 of the Code of Criminal Procedure on the basis of the incriminating materials made available against each one of them, they denied each and every circumstance put up against them as false and contrary to facts. The first accused denied having given any statement at all to the police. A.1 also stated that he was not in the house on that night. D.Ws.1 and 2 are the friends of A.1.Their evidence in sum and substance shows that the door of the house of the accused was broke opened and then on their entry they found Suriakala lying dead. D.W.3 is none else than the son of A.1 and the deceased. He would state that on the occurrence day when he went to computer class, his father A.1 was not in the house and he left the house even one day prior to the occurrence day on business purpose. Though, the class was over at 12.00 noon his mother (the deceased), who had left him and his sister in the morning at the computer class did not come to pick them up. He telephoned twice to the house. On both the occasions, A.2 alone picked up the phone stating that his mother is sleeping. D.W.3 was taken home by D.Ws.1 and 2 at about 5.30 p.m. where he found A.2 alone. He also noticed that the room in which his mother was found later on was found bolted. D.Ws.1 and 2 with a crowbar broke opened the door and on hearing the noise, neighbours came there. Once the door was broke opened, P.W.1 arrived there and all of them went inside where they found Suriakala lying dead. Mr.T.Gowthaman, learned counsel appearing for the appellants primarily contended that A.1 had not given any extra judicial confession at all and the signature in Ex.P.4 is not that of A.1. He produced before us a certified copy of the petition and order filed in the Sessions Case bearing C.M.P.No.34 of 2002, which contains two requests namely, (1) to summon three persons as witnesses and (2) for a direction to the Director of Fingerprint Bureau, Chennai to depute one finger print expert to give opinion on the alleged signature of A.1 found in Ex.P.4 compared with his admitted signatures found on the bail bonds filed before the Committal Court. It is then contended that request No.1 referred to above alone was granted and the second request was not even taken up for consideration. The Certified copy of the petition and the order in C.M.P.No.34 of 2002 affirms the above fact namely, after directing issue of summons to witnesses 1 to 3, the petition was closed on 26.12.2002. It is then submitted by the learned counsel for the appellants that even P.W.1 himself would state that when he reached home at about 6.15 p.m. he found the door broke opened and the latch was found broken. Same is the evidence of D.Ws.1 to 3. Therefore if Suriakala was done to death by strangulation by any extraneous elements namely, accused 1 to 3 as projected by the prosecution, it is not possible to reconcile as to how the room in which the dead body was found, was found bolted from inside, which was later on broke opened. Learned counsel also relied upon Ex.P.3, the Observation Mahazar to show that the door was found broken. By taking us through the medical evidence, it is contended by the

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learned counsel that the possibility of Suriakala committing suicide by hanging is not eliminated at all. Learned counsel also took us through the symptoms found on the dead body, as noted in the post-mortem report to show that Suriakala might have committed suicide. We heard the learned Additional Public Prosecutor on the above points.

7. In the light of the arguments advanced by the learned counsel on either side we went through the entire records. The prosecution primarily relies upon the evidence of P.W.6, the Village Administrative Officer before whom A.1 is stated to have confessed and his confession statement being Ex.P.4. A.1 has been consistently disputing the prosecution case that he confessed before P.W.6 and he also went to the extent of contending that his signature is not found in Ex.P.4. Normally we would have rejected the submission as a self serving statement. But in this case we are unable to do so because as could be seen from the certified copy of the petition in C.M.P.No.34 of 2002 filed in the sessions case, he had taken a definite stand that he had not signed in Ex.P.4 thereby denying his signature itself in Ex.P.4 and as such the Court must give a direction to the Director of Fingerprint Bureau, Chennai to depute one of the handwriting expert to examine the disputed signature with the admitted signature. We are surprised to find that when such a positive step is taken by one of the accused, who is pinned down to the extra judicial confession, to have it examined by an expert, the learned Trial Judge took it so lightly and easily, as a result of which, he did not pass any order on that request namely, either ordering it or rejecting it. The very fact that A.1 had taken such a bold step in moving the learned Trial Judge to get his disputed signature compared with his admitted signature by an expert, would itself show that A.1 was prepared to stick to his stand namely, that he did not sign Ex.P.4. This is a very serious matter especially in a case of murder and therefore we have no hesitation at all to hold that the learned Trial Judge could have taken some more pains and given due attention to the request made by the first accused, so that, once such a comparison is done, it will help the court to decide the case one way or the other. By not taking up the request of the first accused as indicated above for consideration at all, we find that the first accused had been irretrievably prejudiced in the face of his defence that Ex.P.4 does not contain his signature. Under these circumstances, we are not inclined to reject the argument of the learned counsel for the appellants that Ex.P.4 is surrounded by suspicious circumstances. The suspicious circumstances according to the learned counsel is A.1 alleged to have given the confession statement before P.W.6 one month after the crime and there is no material on record to show that P.W.6 knew A.1 earlier or A.1 had confidence and trust in P.W.6. For all the reasons stated above, we eliminate Ex.P.4 from our consideration.

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8. This is not the only disadvantage in this case to the prosecution and there are too many. The case of the prosecution is that the accused dragged Suriakala inside the room; A.2 and A.3 caught hold of the lower limb and upper limb, while A.1 strangulated her neck with the saree - M.O.1. As noted earlier, there is no direct evidence to the crime. The evidence on record clearly indicate that Suriakala had bolted her room door from inside. D.W.3 is an youngster, aged about 16 years and on the date of occurrence, in 2001 he would have been 14 years. P.W.1 even in his evidence in chief would state that after A.2 called him over telephone to come and see his sister, who is not opening the door, D.W.3 also called him around 5.30 p.m. stating that he peeped into the room by removing the tiles and at that time he found his mother lying face down and therefore P.W.1 must come home immediately. P.W.1 in his evidence in chief itself states that when he went home he found the door and the latch broken. Ex.P.3 is the observation Mahazar prepared within a short time after the investigation was started. The Observation Mahazar relates to the crime scene. In the Observation Mahazar also it is found noted that the room door was found broken. The evidence of D.Ws.1 to 3 is that the room door was broke opened as soon as they went to the crime scene. The above material evidence gives a direct lie to the prosecution case that all the three accused dragged Suriakala into the room; murdered her and then came out. If this could have happened, then it is not possible to reconcile to the situation namely, how the door of the room in which Suriakala was found dead, was bolted from inside. From the Observation Mahazar we do not find that the said room had any other ingress or egress. In other words, there appears to be only one door.

9. Let us also go through the symptoms found on the dead body as noted in the post-mortem report. We have already extracted the symptoms also. The symptoms show that two ligature marks were found on the left side of the neck one below the other, just below the lower jaw and they are found to be 2 cms broad shallow furrow. The symptoms noted also shows that they are in semicircular pattern interrupted on the right side of the neck. Therefore it is clear that the ligature marks are found only on one side of the neck namely, left side and it gets interrupted at the middle of the neck. Only when a person hangs himself or herself, such symptoms are possible. If a person is strangulated to death by another person using a saree or rope or whatever it is, then the ligature marks would be found on both sides of the neck. In fact P.W.7, the Doctor, who did post-mortem had categorically admitted in his evidence in cross that it is not possible to totally eliminate the case of suicide by hanging.

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10. In the light of our discussion, we are inclined to hold that the prosecution case bristles with so many suspicious circumstances and the case of the defence cannot be said to be utterly false. P.W.2 herself had deposed that her daughter told her, since many men were visiting A.3 in the house, she is ashamed to stay there and probably that may be reason for hanging herself. It is not possible to read one's mind. But one thing is certain namely, the prosecution had failed to establish their case beyond all reasonable doubt. For all the reasons stated, we are inclined to set aside the judgment under challenge and accordingly it is set aside and the appeal is allowed. All the accused are acquitted of the offences for which they were charged, tried and convicted. Fine amount, if any paid, is directed to be refunded to them. Bail bonds, if any executed by them, shall stand terminated forthwith.

Tr/ Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Addl. District and Sessions Judge (FTC No.3),Namakkal.

2. -do- through Principal Sessions Judge,Namakkal

3. The Judicial Magistrate,Tiruchengode.

4. -do- Through the Chief Judicial Magistrate, Tiruchengode.

5. The District Collector, Namakkal.

6. The Director General of Police, Chennai.

7. The Public Prosecutor, High Court, Madras.

8. The Superintendent, Central Prison, Vellore.

9. The Superintendent, Central Prison, Salem

10. The Inspector of Police, Pallipalayam Police Station
Namakkal District.

1 cc to Mr..T.Gowthaman, Advocate, SR.51630
jrg (co)

dv/16.11.06 Crl.A.No.1110/2004

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